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SURFACE TRANSPORTATION BOARD

DECISION

STB DOCKET NO. ISM 35007

PROTEST AND PETITION FOR SUSPENSION AND INVESTIGATION
(National Motor Freight Classification)

Decided: January 20, 2000

In Supplement 3 to Tariff STB NMF 100-Z (National Motor Freight Classification), issued by the National Motor Freight Traffic Association, Inc. (NMFTA), Agent, revisions are proposed to Items 49265 and 49540, et al., to make the classification of the shipments of Cloth, Fabric or Piece Goods currently covered by Item 49265 dependent upon the density of the shipments. The currently effective classifications in Item 49265 (Class 85 for "Knit" in sub 1, and Class 70 for "Woven" in sub 2) are not subject to density provisions.¹ The revisions are proposed to become effective January 22, 2000, pursuant to a collective action agreement approved by the Board.

A protest requesting suspension and investigation of the proposed revisions was filed by the American Textile Manufacturers Institute (ATMI). NMFTA filed a reply to the protest.²

ATMI contends that the proposed provisions are unreasonable for the following reasons: (1) the National Classification Committee (NCC) orchestrated the classification change without adequate notice to interested parties; (2) the NCC's claims that commodities in the current Item 49265 have widely varying densities are supported by questionable data; (3) the NCC's claims of problems with misclassification are not supported by the NCC's evidence; (4) the costs of the NCC's classification change outweigh any potential benefits; and (5) the classification change should be suspended and investigated because the NCC's antitrust immunity may soon expire. ATMI further contends that the change is patently onerous and unwarranted because it will impose additional staffing and record keeping burdens on shippers in the midst of their year 2000 transition.

In its reply to the protest, NMFTA states that its proposal scrupulously follows the Board's decision in STB Docket No. ISM 35004, addresses the concerns expressed by involved shippers,

¹ The proposal combines the existing Items 49265 and 49540 into a revised Item 49265, and includes and expands in the revised item the density provisions that are currently limited to the products listed in Item 49640.

² In its reply, NMFTA indicates that on January 13, 2000 (three days after the due date), it received a protest from the Secondary Materials and Recycled Textiles Association (SMART). Although we have no record of receiving any protest from SMART, we would normally not consider such a late filed protest, given the very tight time constraints of suspension cases.

and is reasonable. NMFTA contends that the NCC is obligated to maintain a reasonable classification, and that the current Item 49265 cannot meet this requirement because of the very wide density range of the involved products. NMFTA asserts that the proposed amendments, on the other hand, overcome the deficiency by providing reasonable classifications for the various shipment densities of the products.

NMFTA further contends that it has fully complied with or exceeded all of the procedural requirements of its approved collective action agreement.³ NMFTA argues that protestant misunderstands the Board's decision instituting a review of collective action procedures, and that its procedures currently approved by the Board are valid and will continue to be valid unless and until changes are made as a result of the proceeding. In the interim, NMFTA asserts, it can only be expected to scrupulously comply with the currently approved procedures.

After giving careful consideration to the issues raised in the protest and reply, we find that the amendments should not be suspended and investigated. They will, therefore, be permitted to become effective as proposed.

As we stated in our decision suspending an earlier proposal to make Item 49265 subject to density provisions,⁴ we believe that, as a general matter, density-based ratings are desirable, particularly for products (such as those at issue) which pose no significant stowability or handling problems and where there are wide variations in shipment density.⁵ We suspended the earlier proposal because we had a significant concern regarding the reasonableness of imposing higher ratings for the lowest density shipments, without offering concomitantly lower ratings for the highest density shipments. The current proposal overcomes this deficiency, however, by offering lower ratings for the highest densities for which NCC's data indicates there are significant numbers of shipments. In these circumstances, we do not believe the proposed amendments will be unreasonable and we will permit them to become effective.⁶

³ NMFTA includes extensive documentation in its reply of notices, etc., circulated to interested parties (including protestant) regarding the proposed amendments.

⁴ STB Docket No. ISM 35004, Protest of NCC Action Taken May 3, 1999, (National Motor Freight Classification), served on July 16, 1999.

⁵ In its investigation into motor carrier classification in Ex Parte No. MC-98 (Sub-No. 1), the Interstate Commerce Commission (ICC) observed that "density is usually the most important transportation characteristic," and classifications based on density facilitate giving appropriate recognition to variations in this important characteristic.

⁶ If the representations made by the protestant in STB Docket No. ISM 35004 are correct, a significant number of shipments currently subject to Item 49265 will qualify for lower ratings under the proposed amendments.

We have instituted a proceeding to explore ways of improving shipper participation in the classification process;⁷ however, we find no merit to ATMI's contention that the Board's concern with the current process warrants suspension and investigation of the proposed amendments. The current process was approved by the ICC, and there has been no showing that the currently approved procedures were not correctly followed in connection with the development and implementation of the protested amendments.

ATMI argues that its members will incur new burdens and expenses in operating under the new classification. These burdens, it suggests, are unnecessary, because the premises on which the classification change is based -- wide variations in density for the covered shipments and the potential for misclassification -- have not been proven. There are always some costs associated with adapting to new ways of doing business, but here, the NCC has adequately supported its proposal. It has demonstrated that the current classification, which provides different classes for ostensibly similar products, can lead to interpretation problems. It has demonstrated that the relevant provisions in the current classification embrace wide density variations. And most importantly, by establishing a density-based rating scale for all commodities that provides reductions for denser commodities along with the increases earlier proposed for less dense products, it has remedied the problem that we identified in our decision suspending its prior proposal in STB Docket No. 35004.

In our decision in STB Docket No. 35004, we expressed our general view that density-based ratings are desirable for commodities such as those at issue here. Because the current proposal establishes density-based ratings that appear to us to be reasonable, the request for suspension and investigation will be denied.

It is ordered:

1. The request for suspension and investigation is denied.
2. This decision is effective immediately.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary

⁷ In a decision served on December 29, 1999, in Section 5a Application No. 61 (Sub-No. 6), National Classification Committee -- Agreement, we temporarily extended our approval of NCC's agreement and indicated that we would issue a decision no later than February 15, 2000, addressing the issues raised in the proceeding.